

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

446C0312

SENATE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **HB1106** - 2/25/99

Introduced by: Representatives Wetz, Brown (Jarvis), Cutler, Diedrich (Elmer), Duenwald, Eccarius, Garnos, Hanson, Jaspers, Klaudt, McCoy, McNenny, Monroe, Smidt, and Sutton (Duane) and Senators Vitter, Benson, Bogue, Everist, and Symens

1 FOR AN ACT ENTITLED, An Act to repeal certain tax benefits available to railroads, to revise  
2 certain provisions regarding the right of eminent domain for railroads, and to revise the  
3 formula for assigning assessed railroad valuation to counties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 10-46-7 be amended to read as follows:

6 10-46-7. Tangible personal property, the storage, use, or other consumption of which this  
7 state is prohibited from taxing under the Constitution or laws of the United States of America  
8 or under the Constitution of this state, or tangible personal property sold to the United States,  
9 the State of South Dakota, or any public or municipal corporation of the state which is for the  
10 use, storage, or consumption of such public corporations ~~or which is sold to, used, or to be used~~  
11 ~~as or in operating or maintaining any type of railroad company property which is classified by~~  
12 ~~§ 10-28-1 as operating property~~, is hereby specifically exempt from the tax imposed by this  
13 chapter, ~~provided, however, the exemption as to railroad operating property shall be limited to~~  
14 ~~one-half of such tax imposed by this chapter.~~

15 Section 2. That § 10-28-21.1 be repealed.

1     ~~10-28-21.1. Credit against railroad tax for replacement or repair of rail line -- Exceptions.~~  
2     ~~Any publicly operated railroad or railway corporation operating over rail lines located within this~~  
3     ~~state may claim a credit against the tax levied on such rail lines for amounts which the railroad~~  
4     ~~or railway corporation has certified as having been expended in the replacement and repair of~~  
5     ~~such rail lines. Only those expenses of a capital nature may be certified as an expense eligible for~~  
6     ~~a credit pursuant to this section. The certification required by this section shall be on forms~~  
7     ~~provided by the Department of Revenue. The labor and material expenses certified pursuant to~~  
8     ~~this section shall be itemized separately. The credit provided in this section shall be applied~~  
9     ~~proportionally across the railroad's entire mainline within this state. The credit shall be applied~~  
10    ~~to tax liability over a three-year period in an amount equal to thirty-three and one-third percent~~  
11    ~~the first year following certification; thirty-three and one-third percent of such an amount shall~~  
12    ~~carry forward into the second year following certification; and thirty-three and one-third percent~~  
13    ~~shall carry forward into the third year following certification. Each year's carryover shall be~~  
14    ~~accumulated as a tax credit with other years' annual tax credits. No credit may be given for the~~  
15    ~~repair or replacement of railway line necessitated by washout, fire, or train derailment. No rail~~  
16    ~~line carrying over ten million gross ton miles per mile annually may receive a credit pursuant to~~  
17    ~~this section. Any rail line which carries between five million and ten million gross ton miles per~~  
18    ~~mile annually shall receive a credit for only one-half of the expenses certified pursuant to this~~  
19    ~~section. The provisions of this section do not affect credits certified prior to January 30, 1994.~~

20       Section 3. That § 49-16A-1 be amended to read as follows:

21       49-16A-1. Terms used in this chapter mean:

- 22       (1)    "Common carrier," a carrier which holds itself out to the general public as engaged  
23              in the business of transporting freight in intrastate commerce which it is accustomed  
24              to and is capable of transporting from place to place in this state, for hire;
- 25       (2)    "Department," the Department of Transportation created by chapter 1-44;

- 1 (3) "For hire," the condition of receiving remuneration of any kind, paid or promised,  
2 either directly or indirectly, for the transportation of freight;
- 3 (4) "Freight," all property tendered for transportation by a railroad;
- 4 (5) "Railroad," a any association or corporation, or other entity, other than a state agency  
5 or authority, engaged in operating a common carrier by rail regardless of motive  
6 power used, excluding street railroads;
- 7 (6) "Road," all track, right-of-way, bridges, mainlines, branchlines, spurs, sidetracks,  
8 interchanges, and all other fixtures and real property owned or operated by a railroad  
9 to discharge its obligations as a common carrier by rail;
- 10 (7) "Shipper," a consignor or consignee;
- 11 (8) "Commission," the Transportation Commission created by § 1-44-4;
- 12 (9) "Negotiated in good faith," a bona fide offer to pay all costs and damages as  
13 compensation for the acquisition of property desired by the applicant for the  
14 construction or reconstruction of a road, including the economic costs or diminution  
15 associated with or caused by the construction or reconstruction if there is a partial  
16 taking of property.

17 Section 4. That § 49-16A-75 be amended to read as follows:

18 49-16A-75. A railroad may exercise the right of eminent domain in acquiring right-of-way  
19 as provided by statute, but only upon obtaining authority from the Governor or the commission,  
20 based upon a determination by the Governor or the commission that the railroad's exercise of the  
21 right of eminent domain would be for a public use consistent with public necessity. The Governor  
22 or the commission may, without limitation, consider the requirements of sections 5, 6, and 7 of  
23 this Act when granting or denying an application for authority to use eminent domain. The  
24 decision to grant or deny an application shall be made after reasonable notice and opportunity  
25 to be heard, pursuant to chapter 1-26.

1       Section 5. That chapter 49-16A be amended by adding thereto a NEW SECTION to read  
2 as follows:

3       The commission shall in accordance with chapter 1-26, promulgate rules:

- 4       (1)   Establishing a form upon which a railroad may apply for authority to exercise the right  
5           of eminent domain;
- 6       (2)   Specifying the information to be submitted by an applicant; and
- 7       (3)   Administering applications for authority to exercise the right of eminent domain.

8       Section 6. That chapter 49-16A be amended by adding thereto a NEW SECTION to read  
9 as follows:

10      The applicant has the burden of proving by clear and convincing evidence that the exercise  
11 of the right of eminent domain is a public use consistent with public necessity.

12      Section 7. That chapter 49-16A be amended by adding thereto a NEW SECTION to read  
13 as follows:

14      A railroad's exercise of the right of eminent domain is a public use consistent with public  
15 necessity only if the use of eminent domain:

- 16      (1)   Has as purpose providing railroad transportation to shippers in South Dakota, for  
17           commodities produced, manufactured, mined, grown, used, or consumed in South  
18           Dakota;
- 19      (2)   Is proposed by an applicant with the financial resources necessary to complete the  
20           proposed construction or reconstruction along with any related facilities, construction,  
21           or mitigation which are necessary to protect against harm to the public safety,  
22           convenience, or other adverse socioeconomic or environmental impact, as evidenced  
23           by an irrevocable financing commitment from a lender with adequate capitalization to  
24           fulfill its commitment;
- 25      (3)   Is proposed by an applicant who has complied with chapter 34A-9;

- 1       (4)   Is proposed by an applicant who has negotiated in good faith to privately acquire  
2           sufficient property without the use of eminent domain;
- 3       (5)   Is proposed by an applicant who has filed a plat, as required by § 49-16A-64, and that  
4           plat specifically sets forth the route of the road to be constructed or reconstructed,  
5           identifies each affected landowner, and specifies the location, along with construction  
6           methods and engineering specifications for all main lines, sidings, yards, bridges,  
7           crossings, safety devices, switches, signals, and maintenance facilities; and
- 8       (6)   Provides that electric utilities, public utilities, telecommunication companies, and rural  
9           water systems have the right to the use of the right-of-way for the placement of  
10          underground facilities, without fee, subject to reasonable regulation as to location and  
11          placement.

12       Section 8. That § 10-28-16 be amended to read as follows:

13       10-28-16. The Department of Revenue shall, on or before the fourth Monday in August, each  
14       year, transmit to the county auditor of each county through which any railroad runs, a statement  
15       showing the length of main track, of main line or lines, and the branches thereof and sidetracks  
16       within such county, and the assessed value based on a statewide formula that weights traffic (ton  
17       miles) ~~seventy-five~~ thirty-three and one-third percent and miles of track in the county by  
18       ~~twenty-five~~ sixty-six and two-thirds percent. The county auditor shall then distribute the value  
19       to each taxing district where the line runs on a per mile basis within the county.

1    **BILL HISTORY**

2    1/21/99 First read in House and referred to State Affairs. H.J. 110

3    2/1/99 Scheduled for Committee hearing on this date.

4    2/1/99 State Affairs Do Pass, Passed, AYES 7, NAYS 5. H.J. 277

5    2/2/99 House of Representatives Do Pass, Failed, AYES 26, NAYS 43. H.J. 329

6    2/2/99 Intent to reconsider. H.J. 330

7    2/3/99 House of Representatives Reconsidered, AYES 40, NAYS 27. H.J. 346

8    2/3/99 House of Representatives Deferred to another day. H.J. 347

9    2/9/99 Motion to Amend, Passed. H.J. 440

10   2/9/99 House of Representatives Do Pass Amended, Passed, AYES 42, NAYS 26. H.J. 441

11   2/10/99 First read in Senate and referred to State Affairs. S.J. 422

12   2/19/99 Scheduled for Committee hearing on this date.

13   2/22/99 Scheduled for Committee hearing on this date.

14   2/24/99 Scheduled for Committee hearing on this date.

15   2/24/99 State Affairs Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 659